

Message Text

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C O N F I D E N T I A L MOSCOW 05950

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FOR GARRISON FROM MATLOCK

E.O. 11652: GDS
TAGS: OGEN
SUBJECT: OFFICIAL-INFORMAL

HOUSING PROBLEM: YOU WILL HAVE SEEN REGULAR CHANNEL
MESSAGE ON VORONIN'S DISAPPOINTING NEWS, AND REPORT OF OUR
SUBMISSION OF NOTE. WE HAVE FOLLOWING COMMENTS ON
RETALIATORY MEASURES:

A. WE DOUBT THAT HOLDING OFF ON UTILITIES WILL DO
THE TRICK AND WE ARE OPPOSED TO PLAYING WITH VISAS. WE
ARE EXTREMELY VULNERABLE WITH OUR HEAVY TDY PRESENCE AND
CONSTANT SEABEE TURNOVER. AT ANY GIVEN TIME NOW WE HAVE
BETWEEN 35 AND 50 TDY WORKERS (SEABEES, AUSTRIANS AND
BRITS). FURTHERMORE, THE EFFECTS OF VISA DELAYS ARE NOT
IMMEDIATE.

B. WE STILL INCLINE TO DECLARATION OF SITE AS
"CLOSED AREA" TO SOVIET PERSONNEL. IT SEEMS TO US THAT
THIS IS CLEARLY A LEGAL STEP, AND ONE THAT WOULD NOT
AFFECT U.S. CONTRACTORS DIRECTLY. WE DOUBT THAT SOVIETS
WILL WISH CONSTRUCTION TO GO FORWARD WITHOUT PERSONS ON
SITE, BUT IF SO, THEY AND NOT WE WOULD HAVE TO INSTRUCT
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PAGE 02 MOSCOW 05950 281335Z

THE CONTRACTORS TO HOLD UP AND THEY WOULD THEREFORE
CLEARLY BEAR FINANCIAL RESPONSIBILITY FOR THE CONSEQUENCES.
WE SEE THIS AS A SIMPLE STEP WHICH COULD BE IMPLEMENTED
IMMEDIATELY BY FORMAL NOTE WHICH WOULD STATE THAT IN
VIEW OF SOVIET DEFAULT ON FORMAL COMMITMENTS MT. ALTO
SITE WILL BE CLOSED TO SOVIET OFFICIALS UNTIL SUCH TIME
AS THERE IS FULL COMPLIANCE WITH SOVIET COMMITMENTS.

C. REGARDING ORDERING SOVIETS TO STOP CONSTRUCTION, WE DEFER TO L AS TO LEGALITY. WHAT SHOULD BE INVESTIGATED IS WHETHER WE HAVE LEGAL RIGHT TO ORDER STOP IN CONSTRUCTION IN VIEW OF FACT THAT PERMISSION TO START WAS GIVEN AS QUID PRO QUO FOR SOVIET COMMITMENTS WHICH HAVE NOT MATERIALIZED. AS FOR AFFECT ON U.S. CONTRACTORS, BASIC QUESTION IS WHETHER CONTRACT HAS FORCE MAJEURE CLAUSE WHICH WOULD PROTECT CONTRACTOR FROM FINANCIAL CONSEQUENCES OF SUCH ACTION. IT SEEMS TO US THAT THESE ARE QUESTIONS FOR L AND NOT FBO, AND UNDERSTAND DEPT. HAS COPY OF GENERAL CONTRACT WITH GEORGE HYMAN CO. OUR HUNCH IS THAT IF CONTRACTS HAVE FORCE MAJEURE CLAUSE, CONTRACTORS WOULD HAVE RIGHT TO CHARGE SOVIETS FOR INCREASED COSTS OF INTERRUPTION, BUT WE RECOGNIZE THAT LAWYERS MUST BE CONSULTED ON THESE POINTS.

D. IN SUM, WE RECOMMEND DECLARING THE SITE A CLOSED AREA AS A FIRST STEP AND SEEING WHAT THE SOVIET REACTION IS, WHILE AT THE SAME TIME STUDYING THE LEGAL QUESTIONS INVOLVED IN THE OTHER OPTIONS IN CASE NO APARTMENTS ARE FORTHCOMING. TOON

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